

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3132 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

UNIPACK PLASTIC WORKS

Versus

SHUKLA OR SUCCESSOR

Appearance:

MR MUKESH R SHAH for Petitioners
MR MI HAVA for Respondent No. 1
MR AKIL KURESHI for Respondent No. 3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 07/07/2000

ORAL JUDGEMENT

#. In this petition filed under Article 226 of the Constitution of India, the petitioners who are principal borrowers of Adarsh Co-operative Bank Ltd. have challenged the action of the recovery officer, whereby

the recovery officer attempted to auction the property of the guarantor of the petitioners who is impleaded as respondent No.3.

#. It is contended by the petitioners that inspite of the amount having been paid by the petitioners, they have not rendered the correct account. It is the case of the petitioners that unless and until the machinery is sold or auctioned and the amount is realised and thereafter if any amount is outstanding then and then only the property of the guarantor can be auctioned. Notwithstanding the above fact, the recovery officer i.e. the respondent No.1 has issued impugned notice dated May 28, 1987, which was addressed to the Police Commissioner and the copy thereof was also addressed to the guarantor - Niranjan Lalluram Vyas, wherein, it has been mentioned that the recovery officer was to visit the place of the guarantor on June 9, 1987 for attachment of the property belonged to the guarantor.

#. The petitioners have prayed for following main reliefs in the prayer clause.

"(A) The Special Civil Application be admitted

(B) Be pleased to issue a writ of mandamus or any appropriate writ, direction or order, directing the respondents, their agents and servants to give correct account with regard to the petitioner's loan and be pleased to quash and set aside the notice at Exh. 'A' and be pleased to allow this Special Civil Application accordingly."

#. When this matter was listed for admission hearing, RULE was issued and ad-interim injunction was also granted on condition to deposit Rs.15,000/- on or before August 21, 1987.

#. When the matter is called out today, Mr.M.R.Shah, learned advocate for the petitioners is present, whereas, none is present on behalf of the respondents. Mr.M.R.Shah, learned advocate for the petitioners makes a statement that pursuant to the order of issuance of rule, the petitioners have already deposited Rs.15,000/- on August 12, 1987. He also states that so far as the impugned notice at Annexure-A is concerned, by lapse of time, it does not assume any survival value. He further states that at present he has no instructions from the petitioners as to what has happened to the aforesaid

recovery. He, therefore, states that the petition may be disposed of by passing appropriate order reserving liberty to move this Court in case of difficulty in future. It is also submitted by him that the petitioners may also be permitted to move the respondent Bank to ask for correct account from the concerned bank, if necessary.

#. In view of aforesaid state of affairs and the statement made at the bar by Mr.M.R. Shah, learned advocate for the petitioner, since the petition has now become infructuous and the impugned notice which is at Annexure-A does not assume any survival value, the petition deserves to be rejected and accordingly the same is hereby rejected. Rule is discharged. Ad-interim relief granted earlier stands vacated. However, it would be open for the petitioners to move this Court in case of difficulty in future and it would also be open to the petitioners to move the concerned bank to obtain correct account and the outstanding, if any.

Date : 7-7-2000 [A. M. Kapadia, J.]

#kailash#